

SECTION 569 - WRDA 99

NORTHEASTERN MINNESOTA

MODEL PROJECT COOPERATION AGREEMENT
DESIGN

BY
A NON-FEDERAL SPONSOR
PARTIAL COST REIMBURSEMENT

SEPTEMBER 2001

GENERAL NOTES:

1. GENERAL. - The attached model must only be used when the Non-Federal Sponsor will be designing the project.

2. USE OF DESIGN AGREEMENT. - In those cases where the ‘project’ consists of design and/or implementation of management/business practices, the section 569 Design Agreement should be used.

3. MULTIPLE SPONSORS. - In the event there are 2 or more entities wishing to serve as the Non-Federal Sponsor for the project, the agreement can be modified to identify all the entities collectively as the “Non-Federal Sponsors”. However, it should be explained to all entities that the term “Non-Federal Sponsors” is construed to hold multiple sponsors jointly and severally liable where appropriate. The changes outlined below are not considered a deviation from the model.

A. Modify title to include name of each entity serving as Non-Federal Sponsor.

B. Modify first paragraph to include name of each entity serving as Non-Federal Sponsor. (example: ... Magoffin County Fiscal Court represented by the Magoffin County Judge and the City of Salyersville, Kentucky represented by its Mayor (hereinafter the “Non-

C. Change “Non-Federal Sponsor” to “Non-Federal Sponsors” throughout the agreement. There are several paragraphs where this change will require additional changes immediately following the phrase “Non-Federal Sponsors” to reflect multiple sponsors. (i.e. “its” to “their” or “assumes” to “assume”, etc.).

D. A separate Certificate of Authority will be required for each entity serving as Non-Federal Sponsor.

E. A Certification Regarding Lobbying must be signed by each signatory to the agreement.

4. GENERAL. - Remove all bold type notes from the agreement prior to forwarding to HQ for review, if necessary.

5. GENERAL. - Choose (1) or (2) as appropriate to match title of Non-Federal Sponsor representative.

6. FORMAT FOR DATE. – The civilian format for the date should be used (example: January 22, 2000).

7. ARTICLE VII. - Include the phrase after the colon only if Article XVI - Obligations of Future Appropriations is included in the PCA and the Non-Federal Sponsor requests this language. In addition, delete the second occurrence of “the”.

8. ARTICLE XIII. – Input full address of sponsor and Government - including titles or office title/symbol of individuals to receive notice. Do not include name of individual to receive notice as they may change throughout life of agreement.

9. ARTICLE XVI. - Include Article XVI only if the Non-Federal Sponsor is a state agency or a political sub-division of the State that derives its funds for the project directly from appropriations and the Non-Federal Sponsor has constitutional or statutory limitations prohibiting it from committing future appropriations. The information to be added in Article XVI.A. should identify the body that makes the appropriations (example: Legislature of the State of Ohio or City Counsel of the City of Cleveland).

10. ARTICLE XVI.A. - Include the text after the colon if requested by the Non-Federal Sponsor. The information to be added in this optional phrase should provide more detailed information on the location of the restriction to creating an obligation of future appropriations (example: Section 7 of the City Charter of Cleveland).

11. SPONSOR’S BUDGET CYCLE. - Choose (1) if the Non-Federal Sponsor has a 1 year budget cycle or (2) if the Non-Federal Sponsor has a 2 year budget cycle.

12. PREPARING PCA FOR SIGNATURE. - When printing agreement for execution: 1) remove all bold type notes from the agreement; 2) be sure that titles of articles are not the last thing at the bottom of the page; and 3) that there are no page breaks which allow half empty pages. Before signature by the Government representative, ensure that the sponsor signs and dates a minimum of four copies of the agreement, and Certification Regarding Lobbying, and that the Certificates of Authority are signed and dated by the appropriate

people. The date on the first page should be filled in by the Government representative signing the agreement not the sponsor. The Government should retain two copies of the executed agreement. All other copies should be provided to the sponsor.

PROJECT COOPERATION AGREEMENT
BETWEEN
THE DEPARTMENT OF THE ARMY
AND
[FULL NAME OF NON-FEDERAL SPONSOR]
FOR
DESIGN
OF THE
[FULL NAME OF PROJECT INCLUDING LOCATION, COUNTY & STATE]

THIS AGREEMENT is entered into this _____ day of _____, _____, by and between the Department of the Army (hereinafter the “Government”), represented by the U.S. Army Engineer, _____ District (hereinafter the “District Engineer”), and **[FULL NAME OF NON-FEDERAL SPONSOR]** (hereinafter the “Non-Federal Sponsor”), represented by **[SEE GENERAL NOTE - 5 - CHOOSE: (1) the (2) its] [TITLE OF NON-FEDERAL SPONSOR REPRESENTATIVE SIGNING THIS AGREEMENT]**.

WITNESSETH, THAT:

WHEREAS, the Secretary of the Army is authorized to provide design and construction assistance for water-related environmental infrastructure and resource protection and development projects in northeastern Minnesota (hereinafter the “Section 569 Program”) pursuant to Section 569 of the Water Resources Development Act of 1999 (Public Law 106-53);

WHEREAS, Section 569 of the Water Resources Development Act of 1999 (Public Law 106-53), provides that the Secretary of the Army shall not provide assistance for any water-related environmental infrastructure and resource protection and development project, or separable element thereof, unless the project is publicly owned;

WHEREAS, the **[FULL NAME OF THE PROJECT]** in **[SPECIFIC LOCATION OF THE PROJECT, INCLUDING COUNTY & STATE]** (hereinafter the “Project”, as defined in Article I.A. of this Agreement) has been identified as a project of the type authorized by Section 569 of the Water Resources Development Act of 1999 (Public Law 106-53);

WHEREAS, the Government and the Non-Federal Sponsor desire to enter into a Project Cooperation Agreement (hereinafter the “Agreement”) for the design of the Project;

WHEREAS, Section 569 of the Water Resources Development Act of 1999 (Public Law 106-53), specifies the cost-sharing requirements applicable to the Project and provides that total design costs shall be shared 75 percent Federal and 25 percent Non-Federal;

WHEREAS, Section 569 of the Water Resources Development Act of 1999 (Public Law 106-53), provides that the Secretary of the Army shall not provide assistance for any water-related environmental infrastructure and resource protection and development projects, or separable element thereof, until each non-Federal sponsor has entered into a written agreement to furnish its required cooperation for the project or separable element;

WHEREAS, pursuant to Section 569 of the Water Resources Development Act of 1999 (Public Law 106-53), the Secretary of the Army is authorized to provide assistance, which may be in the form of grants or reimbursements of the Federal share of project costs, to the Non-Federal Sponsor and to afford credit, not to exceed 6 percent of total construction costs of the Project, for the reasonable costs of design completed by the non-Federal interest before entering into a written agreement with the Secretary;

WHEREAS, Section 102 of the Energy and Water Development Appropriations Act, 2000 (Public Law 106-60), provides that credits and reimbursements afforded under certain general authorities and under project specific authority, such as Section 569 of the Water Resources Development Act of 1999 (Public Law 106-53), shall not exceed \$10,000,000 per project in each fiscal year, nor shall they exceed \$50,000,000 for all applicable projects in each fiscal year; and

WHEREAS, the Government and Non-Federal Sponsor have the full authority and capability to perform as hereinafter set forth and intend to cooperate in cost-sharing and financing of the design of the Project in accordance with the terms of this Agreement.

NOW, THEREFORE, the Government and the Non-Federal Sponsor agree as follows:

ARTICLE I - DEFINITIONS AND GENERAL PROVISIONS

For purposes of this Agreement:

A. The term "Project" shall mean the design of **[DESCRIBE THE FEATURES TO BE DESIGNED PURSUANT TO THIS AGREEMENT IN DETAIL SUFFICIENT TO AVOID ANY CONFUSION OVER WHAT IS OR IS NOT INCLUDED]** in **[FULL NAME OF THE PROJECT INCLUDING LOCATION, COUNTY & STATE]** as generally described in the **[TITLE OF DOCUMENT (SCOPE OF WORK, ETC.) THAT MEMORIALIZES THE FEATURES OF THE PROJECT]**, dated **[SEE GENERAL NOTE - 6]** _____, ____.

B. The term "total design costs" shall mean all costs incurred by, or on behalf of, the Non-Federal Sponsor and by the Government in accordance with the terms of this Agreement that the District Engineer determines are directly related to project design. Subject to the provisions of this Agreement, the term shall include, but is not necessarily limited to: the costs of design incurred prior to and subsequent to the effective date of this Agreement; the costs of review and technical assistance

incurred by the Government in accordance with Article II.D. of this Agreement; the costs of participation in the Design Coordination Team in accordance with Article III of this Agreement; applicable costs of audit in accordance with Article VIII of this Agreement; and other costs incurred by the Government pursuant to this Agreement. The term does not include any costs of activities performed under any other agreement for the Project; any costs due to betterments; any costs of dispute resolution under Article VI of this Agreement; any costs (other than audit) resulting from financial obligations after the period of design; any costs of negotiating a project cooperation agreement for construction of the Project or separable element thereof; or the Non-Federal Sponsor's costs of negotiating this Agreement.

C. The term "design" shall mean the work performed by, or on behalf of, the Non-Federal Sponsor for design directly related to the Project, including but not necessarily limited to, the reasonable costs of design incurred prior to the effective date of this Agreement, not to exceed 6 percent of the estimated total construction costs of the Project and which have not been included in costs under any other agreement for the Project, and the reasonable costs of design incurred subsequent to the effective date of this Agreement. The term includes, but is not necessarily limited to, concept design; report writing; detailed design; preparation of plans and specifications; design analysis; quantity/cost estimates; obtaining required local, state and Federal permits necessary to perform the design; performance and documentation of environmental, hazardous substances, and historical preservation investigations; and other design services and in-kind design work.

D. The term "estimated total construction costs of the Project", when used to determine the limitation on costs of design incurred prior to the effective date of this Agreement to be included in total design costs under this Agreement, shall mean the estimated construction contract costs to construct the Project and/or the estimated direct labor charges for work performed by, or on behalf of, the Non-Federal Sponsor.

E. The term "period of design" shall mean the time period from execution of this Agreement to the date of completion of all design or execution of a project cooperation agreement for construction of the Project, whichever occurs first.

F. The term "fiscal year" shall mean one fiscal year of the Government. The Government fiscal year begins on October 1 and ends on September 30.

G. The term "betterment" shall mean a change in the design of an element of the Project resulting from the application of standards that the Government determines exceed those that the Government would otherwise apply for accomplishing the design of that element.

H. The term "proper invoice" shall mean a request for reimbursement by the Non-Federal Sponsor in which the Non-Federal Sponsor certifies that payments have been made in the amount requested to, or bills in the amount requested have been received from, contractors, suppliers or employees for performance of work in accordance with this Agreement and provides evidence of

payment made or obligation incurred by, or on behalf of, the Non-Federal Sponsor as may be required by the Government.

I. The term “Federal program funds” shall mean funds or grants provided directly to the Non-Federal Sponsor by a Federal agency, other than the Department of the Army, and any non-Federal matching share required therefor.

ARTICLE II - OBLIGATIONS OF THE NON-FEDERAL SPONSOR AND THE GOVERNMENT

A. Using its funds and the funds to be reimbursed by the Government, the Non-Federal Sponsor shall expeditiously design the Project. The Non-Federal Sponsor assumes full and exclusive responsibility for design of the Project.

1. The Government shall be afforded the opportunity to review and comment on the proposed scope of design including contract specifications, prior to the Non-Federal Sponsor's commencing negotiations for a design contract. In the event that the Non-Federal Sponsor proposes to perform Project design or portions thereof with its own forces, the Government shall be afforded the opportunity to review and approve the scope of work. In addition, to the maximum extent practicable, the Government shall be afforded the opportunity to review and comment on all contract modifications, including change orders, prior to the issuance to the contractor of a Notice to Proceed. In any instance where providing the Government with notification of a contract modification or change order is not possible prior to issuance of the Notice to Proceed, the Non-Federal Sponsor shall provide such notification in writing at the earliest date possible. To the extent possible, the Non-Federal Sponsor also shall afford the Government the opportunity to review and comment on all contract claims prior to resolution thereof. The Non-Federal Sponsor shall consider in good faith the comments of the Government made as a result of its review, but the contents of solicitations, award of contracts, execution of contract modifications, issuance of change orders, resolution of contract claims, and performance of all design on the Project (whether the work is performed under contract or by Non-Federal Sponsor personnel), shall be exclusively within the control of the Non-Federal Sponsor.

2. The Non-Federal Sponsor shall obtain all necessary permits and licenses and comply with all applicable laws, regulations, ordinances and other rules of the United States of America, of the state or political subdivisions thereof wherein the work is performed, or of any other duly constituted public authority, including the laws and regulations specified in Article IX of this Agreement and where applicable shall include appropriate provisions in its contracts for design of the Project.

[INCLUDE PARAGRAPH II.A.3. IF THE NON-FEDERAL SPONSOR DESIRES A VOLUNTARY COST CAP.]

3. Notwithstanding paragraph A.1. of this Article, if the award of any contract for

design of the Project would result in total design costs exceeding \$_____, **[NOTE: THIS AMOUNT CAN NOT BE LESS THAN THE LESSER OF: A) THE ESTIMATE OF TOTAL DESIGN COSTS SHOWN IN ARTICLE IV.A. OR B) THE RESULT OF DIVIDING THE FIRST AMOUNT SHOWN IN ARTICLE V.D. OF THIS AGREEMENT BY .75]** the Non-Federal Sponsor may defer award of that contract and all subsequent contracts for design of the Project until such time as the Non-Federal Sponsor determines to proceed with further contract awards for the Project.

B. In the event that the Non-Federal Sponsor elects to design betterments during the period of design, the Non-Federal Sponsor shall notify the Government in writing and describe the betterments it intends to design. The Non-Federal Sponsor shall be solely responsible for all costs due to betterments, including costs associated with obtaining permits therefor, and shall pay all such costs without reimbursement by the Government.

C. The Non-Federal Sponsor shall require the recipient of its design contract to provide in-progress review of the design at the 30% and 100% stages of completion. The Government's representative or his designee may participate in the review of the design at each stage of completion. Upon completion of the design, the Non-Federal Sponsor shall furnish the District Engineer with copies of the completed design.

D. The Government may perform periodic reviews to verify the progress of design, shall perform a final review to verify the completion of design, and may provide technical assistance to the Non-Federal Sponsor on an as-needed basis until the end of the period of design. Any costs incurred by the Government in furtherance of this paragraph shall be included in total design costs and shared in accordance with the provisions of this Agreement.

E. During the period of design and using information developed by the Non-Federal Sponsor, the Government shall develop and coordinate as required, the Environmental Assessment and either an Environmental Impact Statement or a Finding of No Significant Impact necessary to inform the public regarding the environmental impacts of the Project in accordance with the National Environmental Policy Act of 1969 (hereinafter "NEPA"). Compliance with NEPA is a prerequisite to undertaking construction of the Project. Any costs incurred by the Government relating to compliance with this paragraph shall be included in total design costs and shared in accordance with the provisions of this Agreement.

F. Upon request by the Non-Federal Sponsor, the Government shall include in total design costs those reasonable costs incurred by, or on behalf of, the Non-Federal Sponsor for design that was completed by, or on behalf of, the Non-Federal Sponsor prior to the effective date of this Agreement, not to exceed 6 percent of the estimated total construction costs of the Project, and which have not been included in costs under any other agreement for the Project. Such costs shall be limited to the reasonable, allowable, allocable actual cost of design as determined by the District Engineer. Where the Non-Federal Sponsor's cost for completed design is expressed as fixed costs plus a percentage of

construction costs, the Non-Federal Sponsor shall renegotiate such costs with its Architect-Engineer based on actual costs. On the effective date of this Agreement, the amount of costs for design completed prior to the effective date of this Agreement to be included in total design costs is estimated to be \$_____. This amount is an estimate subject to adjustment by the Government in its sole discretion. The Non-Federal Sponsor in a timely manner shall provide the Government with such documents as are sufficient to enable the Government to determine the amount of costs to be included in total design costs for this design.

G. Subject to Article V of this Agreement, the Government in accordance with Article IV.B. of this Agreement, shall contribute 75 percent of total design costs by, in part, reimbursing the Non-Federal Sponsor for total design costs that are incurred by, or on behalf of, the Non-Federal Sponsor, including such total design costs that were paid with grants from State or local agencies.

H. Upon completion of the period of design or termination of this Agreement, the Government shall perform a final accounting in accordance with Article IV.C. of this Agreement to determine the contributions provided by the Government and the Non-Federal Sponsor toward total design costs and to determine whether the Government and the Non-Federal Sponsor have met their obligations under paragraph G. of this Article.

I. The Non-Federal Sponsor shall establish such legal and institutional structures as are necessary to ensure the effective long-term operation of the Project.

J. The Non-Federal Sponsor and the Government, in consultation with appropriate Federal and State officials, shall develop a facilities or resource protection and development plan, including appropriate engineering plans and specifications.

ARTICLE III - DESIGN COORDINATION TEAM

A. To provide for consistent and effective communication, the Non-Federal Sponsor and the Government, not later than 30 calendar days after the effective date of this Agreement, shall appoint named senior representatives to a Design Coordination Team. Thereafter, the Design Coordination Team shall meet regularly until the end of the period of design. The Government's Project Manager and a counterpart named by the Non-Federal Sponsor shall co-chair the Design Coordination Team.

B. The Government's Project Manager and the Non-Federal Sponsor's counterpart shall keep the Design Coordination Team informed of the progress of design and of significant pending issues and actions, and shall seek the views of the Design Coordination Team on matters that the Design Coordination Team generally oversees.

C. Until the end of the period of design, the Design Coordination Team shall generally oversee the Project including issues related to design; including scheduling of reports and work products;

development of plans and specifications; anticipated real property and relocation requirements for construction or implementation of the Project; contract awards and modifications; contract costs; the Government's cost projections; anticipated requirements and needed capabilities for performance of operation, maintenance, repair, rehabilitation, and replacement of the Project; and other related matters.

D. The Design Coordination Team may make recommendations that it deems warranted to the Non-Federal Sponsor on matters that the Design Coordination Team generally oversees, including suggestions to avoid potential sources of dispute. The Non-Federal Sponsor in good faith shall consider the recommendations of the Design Coordination Team. The Non-Federal Sponsor, having the legal authority and responsibility for design of the Project, has the discretion to accept, reject, or modify the Design Coordination Team's recommendations. Except as otherwise provided in this Agreement, the Non-Federal Sponsor may not reject or modify the Design Coordination Team's recommendations when the purpose of such recommendations is to ensure that the Project complies with Federal, State, or local laws or regulations.

E. The costs of participation in the Design Coordination Team shall be included in total design costs, subject to Article V of this Agreement, and shared in accordance with the provisions of this Agreement.

ARTICLE IV - METHOD OF PAYMENT

A. Based on data supplied by the Non-Federal Sponsor and the Government, the Government shall maintain current records of costs incurred by the parties, reimbursements made to the Non-Federal Sponsor, and current projections of total design costs. By [MONTH, YEAR] and at least quarterly thereafter during the period of design, the Government shall provide the Non-Federal Sponsor with a report setting forth costs incurred to date, each party's share of costs incurred to date, costs incurred by or on behalf of each party to date, reimbursements made to date in accordance with paragraph B.2. of this Article, and current projections of total design costs, of each party's share of total design costs, of total design costs incurred by or on behalf of each party, of total reimbursements, and of reimbursements in the upcoming fiscal year. On the effective date of this Agreement, total design costs are projected to be \$_____, the Government's share of total design costs is projected to be \$_____, the Non-Federal Sponsor's share of total design costs is projected to be \$_____, total design costs to be incurred by the Government are projected to be \$_____, total design costs to be incurred by, or on behalf of, the Non-Federal Sponsor are projected to be \$_____, and total reimbursements in accordance with paragraph B.2. of this Article are projected to be \$_____.

[NOTE: THE AMOUNT SHOWN FOR THE GOVERNMENT'S SHARE SHOULD EQUAL 75 PERCENT OF TOTAL DESIGN COSTS. THE AMOUNT SHOWN FOR TOTAL DESIGN COSTS TO BE INCURRED BY THE GOVERNMENT PLUS THE AMOUNT SHOWN FOR TOTAL REIMBURSEMENTS SHOULD EQUAL THE AMOUNT SHOWN FOR THE GOVERNMENT'S SHARE.] Such amounts are estimates subject to adjustment by the

Government and are not to be construed as the total financial responsibilities of the Government and the Non-Federal Sponsor.

B. In accordance with the provisions of this paragraph, the Government shall contribute its share of total design costs required under Article II.G. of this Agreement as it incurs such costs or as such costs incurred by the Non-Federal Sponsor are determined.

1. Periodically, but not more frequently than once every 30 calendar days, the Non-Federal Sponsor shall provide the Government with a proper invoice for costs that it has incurred, or has been incurred on its behalf, and that are not included in a previous proper invoice. Each proper invoice shall identify those costs that were paid with, or will be paid with, Federal program funds and shall provide evidence of payment, obligation to contractors, and costs incurred by the Non-Federal Sponsor's own forces as may be required by the Government. In the event the Non-Federal Sponsor's cost for design is expressed as fixed costs plus a percentage of construction costs, the Non-Federal Sponsor shall renegotiate such costs with its Architect-Engineer based on actual costs prior to such costs being included in a proper invoice.

2. Not later than 14 calendar days after receipt of each proper invoice, the Government, in accordance with this paragraph, shall review the costs identified therein and, subject to Article V of this Agreement, shall include such costs, in whole or in part, in total design costs. Thereupon, the Government shall determine costs incurred to date, each party's share of costs incurred to date, costs incurred by or on behalf of each party to date, and reimbursements previously made to date in accordance with this paragraph. To the extent that the Government determines that costs incurred by the Government to date plus reimbursements the Government previously has made to date in accordance with this paragraph are less than its required share of costs incurred to date, the Government, subject to Article V of this Agreement, shall partially reimburse those total design costs that were incurred by the Non-Federal Sponsor without using Federal program funds and that were not previously reimbursed by the Government.

3. Upon determining in accordance with paragraph B.2. of this Article that reimbursement is due the Non-Federal Sponsor, the Government, subject to Article V of this Agreement, shall make such payment within 14 calendar days. An interest penalty shall be credited to the Non-Federal Sponsor's account automatically by the designated payment office, without request from the Non-Federal Sponsor, if payment is not made by the due date. The interest penalty shall be at the rate established by the Secretary of the Treasury under Section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611) that is in effect on the day after the due date, except where the interest penalty is prescribed by other governmental authority. This rate is referred to as the "Renegotiation Board Interest Rate" and it is published in the Federal Register semiannually on or about January 1 and July 1. The interest penalty shall accrue daily on the proper invoice payment amount approved by the Government and shall be compounded in 30 calendar day increments inclusive from the first day after the due date through the payment date. That is, interest accrued at the end of any 30 calendar day period shall be added to the approved proper invoice payment amount and be subject to interest

penalties if not paid in the succeeding 30 calendar day period.

C. Upon completion of the Project or termination of this Agreement, and upon resolution of all relevant claims and appeals, the Government shall conduct a final accounting and furnish the Non-Federal Sponsor with the results of the final accounting. The final accounting shall determine total design costs, the Government's and the Non-Federal Sponsor's total contribution provided thereto (including reimbursements), and the Government's and the Non-Federal Sponsor's required share thereof.

1. In the event the final accounting shows that the total contribution provided by the Government is less than its required share of total design costs, the Government shall, subject to Article V of this Agreement, no later than 90 calendar days after completion of final accounting, make a cash payment to the Non-Federal Sponsor of whatever sum is required to meet the Government's required share of total design costs.

2. In the event the final accounting shows that the total contribution provided by the Government exceeds its required share of total design costs, the Non-Federal Sponsor shall refund the excess to the Government no later than 90 calendar days after written notice by the Government that the final accounting is complete by delivering a check payable to "FAO, USAED, [**APPROPRIATE USACE DISTRICT**]" to the District Engineer or providing an Electronic Funds Transfer in accordance with procedures established by the Government. In the event existing funds are not available to refund the excess to the Government, the Non-Federal Sponsor shall seek such funds as are necessary to make the refund. In the event that such funds are not made available within a reasonable amount of time, the Government may apply any amounts owed toward the Federal share of costs under any subsequent agreement with the Non-Federal Sponsor for any other project or separable element under the Section 569 Program and may use any other procedures permitted by law. The Non-Federal Sponsor shall be liable for interest in accordance with Article XII.D. of this Agreement to the extent that such refund takes longer than 90 calendar days after the final accounting is complete.

ARTICLE V - LIMITATIONS ON TOTAL DESIGN COSTS AND REIMBURSEMENTS

A. Inclusion of costs in total design costs shall be subject to an audit pursuant to Article VIII.C. of this Agreement to determine the reasonableness, allowability and allocability of such costs.

B. Costs incurred by, or on behalf of, the Non-Federal Sponsor using Federal program funds shall not be included in total design costs and shall not be shared in accordance with the provisions of this Agreement unless the Federal agency providing the Federal program funds verifies in writing that such expenditure of funds is expressly authorized by statute.

C. Except as provided in Article IV.B. of this Agreement, total design costs incurred by, or on behalf of, the Non-Federal Sponsor shall not be subject to interest charges and shall not be adjusted to

reflect changes in price levels since the time that the costs were incurred.

D. As of the effective date of this Agreement, \$_____ of Federal funds have been appropriated for the Section 569 Program, of which \$_____ appropriated for the Section 569 Program is currently projected to be available for the Project. The Government makes no commitment to seek additional Federal funds for the Section 569 Program. Notwithstanding any other provision of this Agreement, the Government's financial participation in the Project, when added to the costs incurred by the Government for other projects of the Section 569 Program, shall not exceed the total amount of Federal funds that have been appropriated and hereafter may be appropriated for the Section 569 Program. In the event that the Federal share of a forthcoming financial obligation for total design costs would be limited by this paragraph, the parties shall proceed in accordance with Article XII.B. of this Agreement.

E. Reimbursement by the Government pursuant to this Agreement, in concert with reimbursements by the Government pursuant to agreements for other projects authorized by Section 569 of the Water Resources Development Act of 1999 (Public Law 106-53), shall be subject to the applicable limitations contained in Section 102 of the Energy and Water Development Appropriations Act, 2000 (Public Law 106-60).

ARTICLE VI - DISPUTE RESOLUTION

As a condition precedent to a party bringing any suit for breach of this Agreement, that party must first notify the other party in writing of the nature of the purported breach and seek in good faith to resolve the dispute through negotiation. If the parties cannot resolve the dispute through negotiation, they may agree to a mutually acceptable method of non-binding alternative dispute resolution with a qualified third party acceptable to both parties. The parties shall each pay 50 percent of any costs for the services provided by such a third party as such costs are incurred. The existence of a dispute shall not excuse the parties from performance pursuant to this Agreement.

ARTICLE VII – HOLD AND SAVE

[SEE GENERAL NOTE - 7: Subject to the provisions of Article XVI of this Agreement, the] The Non-Federal Sponsor shall hold and save the Government free from all damages arising from the design of the Project, and any Project-related betterments, except for damages due to the fault or negligence of the Government or its contractors.

ARTICLE VIII - MAINTENANCE OF RECORDS AND AUDIT

A. Not later than 60 calendar days after the effective date of this Agreement, the Government

and the Non-Federal Sponsor shall develop procedures for keeping books, records, documents, and other evidence pertaining to costs and expenses incurred pursuant to this Agreement. These procedures shall incorporate, and apply as appropriate, the standards for financial management systems set forth in the Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments at 32 C.F.R. Section 33.20. The Government and the Non-Federal Sponsor shall maintain such books, records, documents, and other evidence pertaining to design in accordance with these procedures and for a minimum of three years after the period of design and resolution of all relevant claims arising therefrom. To the extent permitted under applicable Federal laws and regulations, the Government and the Non-Federal Sponsor shall each allow the other to inspect such books, documents, records, and other evidence.

B. Pursuant to 32 C.F.R. Section 33.26, the Non-Federal Sponsor is responsible for complying with the Single Audit Act of 1984, 31 U.S.C. Sections 7501-7507, as implemented by Office of Management and Budget (OMB) Circular No. A-133 and Department of Defense Directive 7600.10. Upon request of the Non-Federal Sponsor and to the extent permitted under applicable Federal laws and regulations, the Government shall provide to the Non-Federal Sponsor and independent auditors any information necessary to enable an audit of the Non-Federal Sponsor's activities under this Agreement. The costs of any non-Federal audits performed in accordance with this paragraph shall be allocated in accordance with the provisions of OMB Circulars A-87 and A-133, and such costs as are allocated to the Project shall be included in total design costs, subject to Article V of this Agreement, and shared in accordance with the provisions of this Agreement.

C. In accordance with 31 U.S.C. Section 7503, the Government may conduct audits in addition to any audit that the Non-Federal Sponsor is required to conduct under the Single Audit Act. Any such Government audits shall be conducted in accordance with Government Auditing Standards and the cost principles in OMB Circular No. A-87 and other applicable cost principles and regulations. The costs of Government audits performed in accordance with this paragraph shall be included in total design costs and shared in accordance with the provisions of this Agreement.

ARTICLE IX - FEDERAL AND STATE LAWS

In the exercise of their respective rights and obligations under this Agreement, the Non-Federal Sponsor and the Government agree to comply with all applicable Federal and State laws and regulations, including, but not limited to, Section 601 of the Civil Rights Act of 1964, Public Law 88-352 (42 U.S.C. 2000d), and Department of Defense Directive 5500.11 issued pursuant thereto, as well as Army Regulation 600-7, entitled "Nondiscrimination on the Basis of Handicap in Programs and Activities Assisted or Conducted by the Department of the Army".

ARTICLE X - RELATIONSHIP OF PARTIES

A. In the exercise of their respective rights and obligations under this Agreement, the Government and the Non-Federal Sponsor each act in an independent capacity, and neither is to be considered the officer, agent, or employee of the other.

B. In the exercise of its rights and obligations under this Agreement, neither party shall provide, without the consent of the other party, any contractor with a release that waives or purports to waive any rights such other party may have to seek relief or redress against such contractor either pursuant to any cause of action that such other party may have or for violation of any law.

ARTICLE XI - OFFICIALS NOT TO BENEFIT

No member of or delegate to the Congress, nor any resident commissioner, shall be admitted to any share or part of this Agreement, or to any benefit that may arise therefrom.

ARTICLE XII - TERMINATION OR SUSPENSION

A. If at any time the Non-Federal Sponsor fails to fulfill its obligations under Articles II.A., II.C., and II.E. of this Agreement, the Assistant Secretary of the Army (Civil Works) may terminate this Agreement or suspend future performance under this Agreement unless he determines that continuation of design of the Project is in the interest of the United States or is necessary in order to satisfy agreements with any other non-Federal interests in connection with the Project.

[USE OPTION 1 OF ARTICLE XII.B. UNLESS THE SPONSOR HAS OFFERED TO CONTRIBUTE FUNDS TO CONTINUE DESIGN OF THE PROJECT IN THE EVENT OF A SHORTFALL OF FEDERAL FUNDS.

!!!! CAUTION !!!! INTENDED USE OF OPTION 2 OF ARTICLE XII.B. POTENTIALLY INVOLVES CONTRIBUTED FUNDS AND TRIGGERS A REQUIREMENT TO NOTIFY THE APPROPRIATIONS COMMITTEES OF THE PROPOSED AGREEMENT PRIOR TO NEGOTIATION OF THE AGREEMENT WITH THE SPONSOR. IF USE OF OPTION 2 IS INTENDED, CONTACT MSC AND HQ PROGRAMS FOR GUIDANCE AND SAMPLE LETTERS PRIOR TO INITIATING NEGOTIATIONS.]

OPTION 1

B. If the Government fails to receive annual appropriations in amounts sufficient to meet its share of scheduled expenditures for total design costs for the then-current or upcoming fiscal year, the Government shall so notify the Non-Federal Sponsor in writing, and within 60 calendar days thereafter the Non-Federal Sponsor without penalty shall terminate this Agreement or suspend future performance under this Agreement. In the event that the Non-Federal Sponsor elects to suspend future performance

under this Agreement in accordance with this paragraph, such suspension shall remain in effect until such time as the Government receives sufficient appropriations or until the Non-Federal Sponsor elects to terminate this Agreement, whichever occurs first.

OPTION 2

B. If the Government fails to receive annual appropriations in amounts sufficient to meet its share of scheduled expenditures for total design costs for the then-current or upcoming fiscal year, the Government shall so notify the Non-Federal Sponsor in writing, and within 60 calendar days thereafter the Non-Federal Sponsor may elect without penalty to terminate this Agreement, to suspend future performance under this Agreement, or to continue design pursuant to this Agreement with its own funds.

In the event that the Non-Federal Sponsor elects to suspend future performance under this Agreement in accordance with this paragraph, such suspension shall remain in effect until such time as the Government receives sufficient appropriations or until the Non-Federal Sponsor elects to terminate this Agreement, whichever occurs first. In the event that the Non-Federal Sponsor elects to continue design with its own funds in accordance with this paragraph, the Non-Federal Sponsor shall pay all total design costs without reimbursement above the amount of annual appropriations received by the Government and allocated to the Project; however the Non-Federal Sponsor may elect at any time to suspend future performance under this Agreement or to terminate this Agreement.

C. In the event that either party elects to terminate this Agreement pursuant to this Article, both parties shall conclude their activities relating to the Project and proceed to a final accounting in accordance with Article IV.C. of this Agreement.

D. Any termination of this Agreement or suspension of future performance under this Agreement in accordance with this Article shall not relieve the parties of liability for any obligation previously incurred. Any delinquent payment owed by the Non-Federal Sponsor to the Government shall be charged interest at a rate, to be determined by the Secretary of the Treasury, equal to 150 per centum of the average bond equivalent rate of the 13-week Treasury bills auctioned immediately prior to the date on which such payment became delinquent, or auctioned immediately prior to the beginning of each additional 3-month period if the period of delinquency exceeds 3 months.

ARTICLE XIII - NOTICES

A. Any notice, request, demand, or other communication required or permitted to be given under this Agreement shall be deemed to have been duly given if in writing and either delivered personally or by telegram or mailed by first-class, registered, or certified mail, as follows:

[SEE GENERAL NOTE - 8]

If to the Non-Federal Sponsor:

If to the Government:

B. A party may change the address to which such communications are to be directed by giving written notice to the other party in the manner provided in this Article.

C. Any notice, request, demand, or other communication made pursuant to this Article shall be deemed to have been received by the addressee at the earlier of such time as it is actually received or seven calendar days after it is mailed.

ARTICLE XIV - CONFIDENTIALITY

To the extent permitted by the laws governing each party, the parties agree to maintain the confidentiality of exchanged information when requested to do so by the providing party.

ARTICLE XV - FUTURE AGREEMENTS

This Agreement shall not be construed as obligating either party to seek funds for, or to participate in, construction or implementation of the Project or a separable element thereof or as relieving the Non-Federal Sponsor of any future obligation under the terms of any project cooperation agreement.

[SEE GENERAL NOTE - 9]

ARTICLE XVI - OBLIGATIONS OF FUTURE APPROPRIATIONS

A. Nothing herein shall constitute, nor be deemed to constitute, an obligation of future appropriations by the _____ of the _____ of _____ **[SEE GENERAL NOTE - 10: ,** where creating such an obligation would be inconsistent with _____ of the _____ of _____].

B. The Non-Federal Sponsor intends to satisfy its obligations under this Agreement. The Non-Federal Sponsor shall include in its budget request or otherwise propose, for each fiscal period, appropriations sufficient to cover the Non-Federal Sponsor's obligations under this Agreement for each **[SEE GENERAL NOTE - 11 - CHOOSE: (1) year (2) biennium]**, and will use all reasonable and lawful means to secure the appropriations for that **[SEE GENERAL NOTE - 11 - CHOOSE: (1) year (2) biennium]** sufficient to make the payments necessary to fulfill its obligations hereunder. The Non-Federal Sponsor reasonably believes that funds in amounts sufficient to discharge these obligations can and will lawfully be appropriated and made available for this purpose. In the event the budget or other means of appropriations does not provide funds in sufficient amounts to discharge these

obligations, the Non-Federal Sponsor shall use its best efforts to satisfy any requirements for payments under this Agreement from any other source of funds legally available for this purpose. Further, if the Non-Federal Sponsor is unable to satisfy its obligations hereunder, the Government may exercise any legal rights it has to protect the Government's interests related to this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, which shall become effective upon the date it is signed by the District Engineer.

DEPARTMENT OF THE ARMY

**[FULL NAME OF NON-FEDERAL
SPONSOR]**

BY: **[SIGNATURE]** _____
[TYPED NAME]
[TITLE IN FULL]

BY: **[SIGNATURE]** _____
[TYPED NAME]
[TITLE IN FULL]

DATE: _____

DATE: _____

CERTIFICATE OF AUTHORITY

I, _____, do hereby certify that I am the principal legal officer of the **[FULL NAME OF NON-FEDERAL SPONSOR]**, that the **[FULL NAME OF NON-FEDERAL SPONSOR]** is a legally constituted public body with full authority and legal capability to perform the terms of the Agreement between the Department of the Army and the **[FULL NAME OF NON-FEDERAL SPONSOR]** in connection with the **[FULL NAME OF “PROJECT” INCLUDING LOCATION]**, and to pay damages in accordance with the terms of this Agreement, if necessary, in the event of the failure to perform, and that the persons who have executed this Agreement on behalf of the **[FULL NAME OF NON-FEDERAL SPONSOR]** have acted within their statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this _____ day of _____.

[TYPED NAME]
[TITLE IN FULL]

[NOTE: THE PERSON SIGNING THE CERTIFICATE OF AUTHORITY CAN NOT BE THE SIGNATORY TO THE AGREEMENT. THE PERSON SIGNING THE CERTIFICATE OF AUTHORITY IS CERTIFYING THAT THE SIGNATORY TO THE AGREEMENT HAS THE AUTHORITY TO OBLIGATE THE NON-FEDERAL SPONSOR.]

CERTIFICATION REGARDING LOBBYING

The undersigned certifies, to the best of his or her knowledge and belief that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

[SIGNATURE OF AGREEMENT SIGNATORY]

[TYPED NAME]

[TITLE IN FULL]

DATE: _____